

Remarks

Claims 1, and 3-9 remain pending after entry of this amendment. Claims 1 and 9 were amended herein, and claim 2 was cancelled herein. Favorable reconsideration is respectfully requested in light of the amendments and remarks submitted herein.

The Examiner objected to the abstract as containing misspellings and improper language, such as said, and the disclosure as containing misspellings. Applicant respectfully traverses this rejection.

Claims 1-8 are rejected under 35 U.S.C. § 112, second paragraph. Applicant respectfully traverses this rejection.

Claims 1-2, 5, and 7-9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gross et al. (WO 97/50093). Applicant respectfully traverses this rejection.

Claims 3-4 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gross et al. (WO 97/50093) in view of Martensson et al. (WO 99/35652). Applicant respectfully traverses this rejection.

Treatment of Claims

The Examiner indicated that he is assuming that the Applicant intended to state fraction of copolymer eluted at a temperature higher than 90° C does not exceed 15% by weight. Applicant does not agree with this treatment of the claims, and notes for the Examiner that the claims specify "such that the fraction of copolymer eluted at a temperature higher than 90° C does not exceed 5% by weight" (emphasis added). Applicant has reviewed the pending claims and does not find a value of 15% anywhere. Applicant is unsure why the Examiner utilized 15%, but assumes that it was a typographical error.

Objections to the disclosure and abstract

The Examiner objected to the abstract as containing misspellings and improper language, such as said, and the disclosure as containing misspellings.

The abstract and disclosure have been reviewed for misspellings. Misspellings that were found were corrected in the amendments to the specification entered above. The abstract was also reviewed and misspellings were corrected and the word "said" was

deleted. Applicant respectfully requests that this objection be withdrawn in light of the amendments made above.

Rejection under 35 U.S.C. § 112

Claims 1-8 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner asserted that claim 2 included a narrower recitation than does independent claim 1 on which it is dependent. Applicant has deleted claim 2 and respectfully requests that this rejection be withdrawn.

Rejection under 35 U.S.C. § 102

Claims 1-2, 5, and 7-9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gross et al. (WO 97/50093). Applicant respectfully submits that Gross does not anticipate the currently pending claims at least because the polymers of Gross have a comonomer distribution as measured by TREF with a value of the percent of copolymer, which elutes out at a temperature of greater than 90° C of greater than about 5%, and preferably greater than about 10% (page 3, lines 17-21). The claims, on the other hand, recite a comonomer distribution as measured by TREF, such that the fraction of copolymer eluted at a temperature higher than 90° C **does not exceed 5% by weight** (emphasis added). Therefore, the composition of Gross does not recite every limitation of claim 1, 9, or the dependent claims and therefore does not anticipate any of the pending claims.

Rejection under 35 U.S.C. § 103

Claims 3-4 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gross et al. (WO 97/50093) in view of Martensson et al. (WO 99/35652). Applicant reiterates the discussion regarding Gross above and further states that Martensson et al. (WO 99/35652) is not prior art against the pending application.

Under 35 U.S.C. § 103(c), subject matter developed by another person, which qualifies as prior art only under one or more of § 102 (e), (f), and (g) of section 102... shall not preclude patentability under this section where the subject matter and the

claimed invention were, at the time the invention was made, owned by the same person. Applicant respectfully asserts that Martensson et al. was developed by another person, and was owned by Borealis Polymers Oy, which later changed their name to Borealis Technology Oy, the same entity that owns the claimed invention, at the time the claimed invention was developed. Applicants therefore respectfully assert that Martensson et al. cannot be used as prior art against this application. Applicant also respectfully asserts that Gross does not render the claimed invention obvious by itself. As discussed above, Gross discloses a composition that has a comonomer distribution as measured by TREF with a value of the percent of copolymer, which elutes out at a temperature of greater than 90° C of greater than about 5%, and preferably greater than about 10% (page 3, lines 17-21). One of skill in the art would therefore not be motivated to modify the invention to result in a composition with a comonomer distribution as measured by TREF, such that the fraction of copolymer eluted at a temperature higher than 90° C does not exceed 5% by weight. Gross teaches away from the invention by having a preferred range that is greater than 10%. Based on the above, Applicant respectfully asserts that the claimed invention is not obvious in view of Gross, and cannot be rejected over Gross in view of Martensson because Martensson is not properly used as prior art in an obviousness rejection over this pending application. Furthermore, even if Martensson were available as prior art under an obviousness rejection, Martensson does not provide motivation to use a comonomer distribution as measured by TREF, such that the fraction of copolymer eluted at a temperature higher than 90° C does not exceed 5% by weight. Even if Martensson did provide such motivation, it could not be combined with Gross without changing the characteristics of Gross such that the composition would no longer be effective for its purpose.

Based on the comments made above, Applicant respectfully asserts that the claims are not obvious and requests withdrawal of this rejection.

CONCLUSION

In view of the remarks presented herein, it is respectfully submitted that the claims are in condition for allowance and notification to that effect is earnestly solicited.

Respectfully submitted,

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